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2018 IL App (3d) 150696-U

Order filed June 5, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 14th Judicial Circuit,
OF ILLINOIS,)	Whiteside County, Illinois.
Respondent-Appellee,)	winteside County, Inmois.
Tr viv)	Appeal No. 3-15-0696
v.)	Circuit No. 09-CF-550
)	
ERIC L. SMITH,)	
)	Honorable
Petitioner-Appellant.)	Stanley B. Steines,
)	Judge, Presiding.

Justices Holdridge and Schmidt concurred in the judgment.

ORDER

- $\P 1$ Held: The trial court had subject matter jurisdiction to enter a conviction against the defendant, so the dismissal of his motion to vacate his burglary conviction as void was affirmed.
- $\P 2$ The defendant appeals from a judgment dismissing his *pro se* motion to vacate his burglary conviction as void.

¶ 3 FACTS

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The defendant was charged with burglary (720 ILCS 5/19-1(a) (West 2008)) and unlawful use of a debit card (720 ILCS 250/8 (West 2008)). The information charged that, on November 22, 2009, the defendant committed burglary when he entered into El Vaquero without authority with the intent to commit the offense of unlawful use of credit card and committed the offense of unlawful use of debit card when he used a card issued to another, without her consent, at Broadway Liquors.

On February 21, 2012, the defendant entered into a plea agreement whereby he pled guilty to burglary in exchange for a sentence of six years in prison and the dismissal of the second charge. As the factual basis for the plea, the State stated that the evidence would show that the defendant attempted to purchase three cartons of cigarettes at a grocery store called El Vaquero with a Mastercard credit card with the name Charlene O'Connell on it. The store owner voided the sale when the defendant could not provide identification. O'Connell's wallet had been stolen. The police then learned that the same card had been used to purchase cigarettes and liquor at Broadway Liquor. The trial court accepted the plea agreement and sentenced the defendant accordingly. The defendant never filed a motion to withdraw the plea nor any appeal.

In 2013, the defendant filed a *pro se* "Motion to Vacate Void Judgment" and a separate petition for postconviction relief, arguing, *inter alia*, that he was not informed of the three-year term of mandatory supervised release (MSR) and that the factual basis did not support a burglary conviction. The trial court considered both as a *pro se* postconviction petition, addressed the MSR issue, and dismissed the petition. The defendant appealed, raising an issue related to fines. This court vacated one fine and otherwise affirmed. *People v. Smith*, No. 3-13-0383 (2014) (unpublished order under Illinois Supreme Court Rule 23).

Thereafter, on August 10, 2015, the defendant filed a new *pro se* "Motion to Vacate Void Judgment," arguing that he was unconstitutionally sentenced as a Class X felon and that he was denied effective assistance of counsel at his guilty plea hearing. The trial court denied the petition, finding that the issues raised were either already raised on appeal or should have been. The defendant appealed.

¶ 8 ANALYSIS

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¶ 10

The defendant argues that his conviction should be vacated as void because the trial court lacked subject matter jurisdiction to enter the conviction. The State argues that the issue was procedurally defaulted but, in any event, the trial court had subject matter jurisdiction to accept the defendant's negotiated plea for burglary. Dismissal of a post-conviction petition without an evidentiary hearing is subject to *de novo* review. *People v. Coleman*, 183 Ill.2d 366 (1998).

Four years after the defendant's guilty plea, the supreme court interpreted the "without authority" portion of the burglary statute in conjunction with the retail theft statute. *People v. Bradford*, 2016 IL 118674. *Bradford* held that remaining without authority, after entering lawfully, applied to situations when the individual: (1) hides and waits for the building to close, (2) enters unauthorized areas within the building, or (3) continues to remain on the premises after his authority is explicitly revoked. *Id.* ¶ 31. The burglary statute was not intended to apply to ordinary shoplifting, and the defendant in *Bradford*, who shoplifted merchandise during normal business hours, was guilty of retail theft, not burglary. *Id.* ¶ 25. Arguably, the defendant could have gone to trial and made a similar argument regarding unlawful use of a credit card as the basis for the burglary conviction.

The defendant, however, pled guilty to burglary. When determining if a factual basis exists for a guilty plea, the trial court has no obligation to ferret out possible defenses. *People v. Bassette*, 391 Ill. App. 3d 453, 457 (2009). To appeal the judgment entered on the guilty plea, the defendant was required to file a motion to withdraw the plea within 30 days of sentencing. Ill. S. Ct. R. 604(d) (eff. July 1, 2006). The defendant in this case never filed a motion to withdraw his plea or a direct appeal. Where a defendant has failed to file a written motion to withdraw his plea of guilty or to reconsider his sentence, the appellate court must dismiss the appeal, with postconviction proceedings the defendant's only recourse. *People v. Flowers*, 208 Ill. 2d 291, 301 (2003).

The defendant has already filed one postconviction petition, though, where this issue was not raised. Thus, his only recourse was a successive petition wherein the defendant demonstrated cause for failing to raise the issue and prejudice resulting from the claimed error. *People v. Jones*, 211 Ill. 2d 140, 148-49 (2004). The defendant, however, did not raise the issue of the elements of his burglary conviction in his successive filing, so he could not raise it for the first time on appeal from the denial of leave to file a successive petition. See *Id.* at 148.

¶ 13

Acknowledging this forfeiture, the defendant argues that his conviction was void for lack of subject matter jurisdiction. See *People v. Thompson*, 2015 IL 118151, ¶ 31 ("A voidness challenge based on a lack of personal or subject matter jurisdiction is not subject to forfeiture or other procedural restraints because a judgment entered by a court without jurisdiction 'may be challenged in perpetuity.""). Subject matter jurisdiction refers to a court's power to hear and determine a class of cases. *People v. Castleberry*, 2015 IL 116916, ¶ 12. The defendant cites to caselaw holding that a trial court is without jurisdiction to enter a conviction based upon actions that do not constitute a criminal offense. See *People v. Kayer*, 2013 IL App (4th) 120028, ¶ 9.

Subsequent to *Kayer* though, the Illinois Supreme Court decided *Castleberry*, wherein it abolished the void sentence rule (the rule that a sentence that does not conform to a statutory requirement is void) and held that a judgment can be declared void for lack of subject matter jurisdiction or personal jurisdiction, but there was no "inherent power" idea of jurisdiction. *Castleberry*, 2015 IL 116916, ¶ 18.

¶ 14 Circuit courts have jurisdiction over all justiciable matters, except for specific exceptions not applicable here. *Id.* Thus, the circuit court had subject matter jurisdiction to enter a conviction against the defendant. See *People v. Sandoval-Carrillo*, 2016 IL App (2d) 140332, ¶ 21 (the trial court had subject-matter jurisdiction over a felony matter because it had the authority to decide the general class of cases to which it belonged and was presented with a justiciable matter). Any argument that the circuit court acted without inherent authority or power, making its actions without jurisdiction, is untenable after the void sentencing rule was abolished by *Castleberry*.

- ¶ 15 CONCLUSION
- ¶ 16 The judgment of the circuit court of Whiteside County is affirmed.
- ¶ 17 Affirmed.